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No. 87-1842

Supreme Court, U.S.
FILED
JUL 18 1988
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

JOHN L. KALTSAS, et al.,

Appellants,

v.

CITY OF NORTH CHICAGO, et al.,

Appellees.

On Appeal From The Appellate Court
Of Illinois For The Second District

MOTION TO DISMISS

MURRAY ROSS CONZELMAN *
33 North County Street
Waukegan, Illinois 60085
(312) 623-1010

WILLIAM G. ROSING *
1 North County Street
Waukegan, Illinois 60085
(312) 662-4321

PETER J. NORDIGIAN *
32 North West Street
Waukegan, Illinois 60085
(312) 623-0112

Counsel for Certain Appellees

* Counsel of Record

July 23, 1988

Midwest Law Printing Co., Chicago 60611, (312) 321-0220

LIST OF PARTIES

The parties to this Motion To Dismiss are listed as follows:

CITY OF LAKE FOREST represented by MURRAY ROSS CONZELMAN

CITY OF NORTH CHICAGO represented by WILLIAM G. ROSING

VILLAGE OF LAKE BLUFF represented by PETER J. NORDIGIAN

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MOTION TO DISMISS

These Appellees move to dismiss upon the following grounds:

I.

THE OPINION BELOW IS BASED ON LONG-STANDING AUTHORITY

The decision below was not novel. It is based on the decision of this Court in the case of *Hunter v. City of Pittsburgh*, 207 U.S. 161 (1907), where this Court said at pages 178-179:

"This Court has many times had occasion to consider and decide the nature of municipal corporations, their rights and duties, and the rights of their citizens and creditors. . . We think the following principles have been established by them and have become settled doctrines of this Court, to be acted upon wherever they are applicable. Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State that may be intrusted to them . . . The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State . . . The State, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protests. In all these respects the State is supreme, and its legislative body, conforming its action to the State Constitution, may do as it will, unrestrained by any provision of the Constitution of the United States . . . The power is in the State, and those who legislate for the State are alone responsible for any unjust or oppressive exercise of it."

II.

STATE AUTHORITY IS ABSOLUTE

Illinois Courts have consistently followed the authority set forth above.

For example, in the case of *Spaulding School District v. City of Waukegan*, 18 Ill. 2d 526 (1960), the Illinois Supreme Court said at page 528:

> "At the outset we must recognize that the Legislature, and it alone, has the power to permit or require the alteration of municipal boundaries by annexation or otherwise."

The Appellate Court for the Second District of Illinois, which is the Court which rendered the decision below, reached the same conclusion in the case of *People Ex Rel. Landwer v. Village of North Barrington*, 94 Ill. App. 2d 265, 237 N.E.2d 350 (1968). In that case the Court said at page 352 of 237 N.E.2d:

> "It is fundamental that municipalities are creatures of the Legislature and entirely subject to the legislative will."

At page 354 of 237 N.E.2d the Court said:

> "Municipalities are mere creatures of the Legislature, created for convenience in the handling of day to day local problems. The Legislature has complete authority over them and may change them from time to time; it may expand, contract or even abolish them, with or without notice, consent, and even against the protests of persons interested in the matter, all without transgressing any constitutional provisions."

The only exception to this rule is found in the case of *Gomillion v. Lightfoot*, 364 U.S. 339 (1960). In that case this Court held that municipal boundaries cannot be used to abridge a "federally protected right". The facts of that case were that an Alabama law authorized the changing of city boundaries and in that case disenfranchised all but four or five of a city's four hundred black voters while not affecting a single white voter. It is small wonder that the Court held that law invalid. In the case at bar no such facts are alleged or involved and the decision simply does not apply to this case.

As a result the Legislature, and only the Legislature, decides the matter of municipal boundaries.

III.

SECTION 2-3-5a OF THE ILLINOIS MUNICIPAL CODE DOES ADVANCE A COMPELLING STATE INTEREST

Based upon the foregoing authorities it is apparent that the concept of "a compelling State interest" does not even arise since the Legislature, and only the Legislature, has authority over municipal boundaries.

If the concept of "a compelling State interest" does arise, then that concept fits directly into the framework of Illinois municipal law.

In the case of *Town of Godfrey v. City of Alton*, 33 Ill. App. 3d 978, 338 N.E.2d 890 (1975), the Appellate Court for the Fifth District of Illinois was concerned with the constitutionality of the very same statutory provisions that is involved in this case, namely Section 2-3-5a, Illinois Municipal Code. The Court held that the foregoing provision did not violate the Constitution. At page 893 of 338 N.E.2d the Court said:

> "The Statute in question . . . is one of numerous Statutes which enable a municipality to control the development of contiguous territory located within one and one-half miles of its corporate limits and not contained within any other municipality. The Legislature has seen fit to delegate to municipalities various powers over such contiguous territories including, for example, the power to zone. . . As early as 1921 the General Assembly provided for municipalities to establish a planning commission. . ."

At pages 894 and 895 N.E.2d the Court said:

> "The consent requirement of the challenged Statute is incidental to and is not independent of, the valid exercise of police power by municipalities within this State. In the absence of the consent requirement,

> contiguous areas would be free to incorporate up to the corporate limits of any existing municipality. The effect of incorporation of contiguous areas would be to nullify all of the validly enacted municipal ordinances affecting such areas, thus abrogating all the plans and regulations designed to promote the development of such areas. Our Legislature in an attempt to protect the police powers it delegated to the municipalities, provided that incorporation of contiguous areas be contingent upon the consent of the affected municipality. We do not find such requirement repugnant to either our Constitution or the United States Constitution. . . Rather, we find the consent requirement to be constitutionally permissible under the well recognized power of the State to control the formation of political subdivisions within its boundaries. . ."

In this case the nearby municipalities have planning jurisdiction within one and one-half miles of their limits and to protect this planning jurisdiction the Legislature has given them the power of consent over the incorporation of a new municipality within that area. This is consistent with the planning jurisdiction previously granted. The ability to control the planning and development of areas adjacent to an existing municipality is "a compelling State interest" since it is in furtherance of the plan of the State to provide existing municipalities with planning powers as well as other police powers to protect their established plans and the land around them.

IV.

MUNICIPAL POWER OVER ADJACENT TERRITORY IS NECESSARY

As indicated Illinois municipalities have planning and other police powers within one and a half miles of their boundaries and the validity of these provisions have been upheld against constitutional attack in the case of *Town*

of Godfrey v. City of Alton, 33 Ill. App. 3d 978, 338 N.E. 2d 890 (5th Dist. 1975).

Municipal boundaries are not stagnant and existing municipalities must have planning powers beyond their boundaries so that when those areas are subsequently annexed they will have been developed or will be developed in accordance with the plans of the existing municipality. A contrary rule would permit haphazard development surrounding municipalities and they would then face the dilemma of either annexing undesirable development or living side by side with it. Either alternative offers a poor result and the Illinois Legislature has wisely chosen to grant existing municipalities the power to plan and control areas within one and one-half miles of their boundaries so that as they expand they will absorb development over which they have had some authority and control.

With few exceptions the cases cited by the Appellants are cases which involve voting rights, that is to say, the right to vote for candidates, and based upon the foregoing that is a far different proposition from the right to vote on municipal boundaries, which is not a "right" and which does not exist.

For example, in *Reynolds v. Sims*, 377 U.S. 533 (1964), this Court held that two plans to apportion the Alabama House of Representatives were invalid because they were not based on population or any other rational basis. The plans dealt with direct voting for representatives and had nothing to do with municipal boundaries.

In the case of *Kramer v. Union Free School District*, 395 U.S. 621 (1969) this Court held invalid a New York Statute limiting voting in school elections to voters who either owned or leased real estate or had children in the school district. The case involved a traditional right to

vote and the question of municipal boundaries was not involved.

In *Moore v. Ogilvie*, 394 U.S. 814 (1969), this Court held invalid a Statute that required election Petitions to have twenty five thousand signatures, including two hundred from each of fifty counties. The Court held that the Statute was invalid because it favored voters in certain counties as against voters who lived in other counties. This case had to with voting for representatives and had nothing to do with municipal boundaries.

In the case of *Communist Party of Illinois v. State Board of Elections*, 518 F.2d 517 (7th Cir. 1975), an Illinois Statute requiring Petitions to have at least twenty five thousand signatures with no more than thirteen thousand from one county was also held invalid. Again the question of municipal boundaries was not involved.

A case cited by Appellants but favoring the Appellees is *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60 (1978). There this Court held that the residents of a small rural community on the outskirts of Tuscaloosa did not have a constitutional right to vote in city elections even though they were subject to the city's extra territorial powers. This Court said at page 71:

> "Government . . . 'is the science of experiment' . . . and a State is afforded wide leeway when experimenting with the appropriate allocation of State legislative power."

At pages 73 and 74 this Court said:

> ". . . this Court does not sit to determine whether Alabama has chosen the soundest or most practical form of internal government possible. Authority to make those judgments resides in the State Legislature, and Alabama citizens are free to urge their proposals to that body."

At page 75 this Court said:

> "Alabama is apparently content with the results of its experiment, and nothing in the equal protection clause of the Fourteenth Amendment requires that it try something new."

The simple answer is that the right to determine municipal boundaries is vested in the Legislature. It is not a "constitutional right" and it is not a "federally protected right".

V.

THIS APPEAL DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION

This problem is not unique to Illinois. All over the United States cities and villages risk being surrounded by adverse and unplanned development. That development has an adverse impact on them whether they subsequently annex the property or not.

Illinois has seen fit to address this problem by granting municipalities extra-territorial powers over planning, development and incorporation. Illinois is apparently satisfied with this solution as evidenced by the opinion below and the other Illinois cases cited above. Indeed, the decision in *Town of Godfrey v. City of Alton*, 33 Ill. App. 3d 978, 338 N.E.2d 890 (5th Dist. 1975), cited above, explains this rationale for the Illinois rule.

Other states have taken different approaches such as that set forth in Alabama and discussed by this Court in *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60 (1978) cited above.

The point is that the Constitution does not require states to take one particular approach and there is no need for a federal solution to this problem.

This problem should be left to the states where it has resided for many years.

If this were not already the law we would urge the Court to adopt it. Since it is and has been the law we urge the Court to adhere to it and find no substantial federal question.

CONCLUSION

For the reasons set forth above these Appellees respectfully move that this Court dismiss the Petition On Appeal filed herein.

Respectfully submitted,

MURRAY ROSS CONZELMAN *
33 North County Street
Waukegan, Illinois 60085
(312) 623-1010

WILLIAM G. ROSING *
1 North County Street
Waukegan, Illinois 60085
(312) 662-4321

PETER J. NORDIGIAN *
32 North West Street
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(312) 623-0112

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